1941. **File No.** O. Tenancy 49 pt II

Legal Deptt.

A. **BRANCH**

Subject:— Opinions under the Bombay Tenancy Act

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Office of the R.L.A.

Prima facie the view taken by the Revenue & Department is correct. The decision of the High Court in the pending case may however be awaited in view of the title set up to the land by Govind Shidlinga in the suit filed by the present applicant.

Sd/-P.N.Lad
23-5-49

O.C Remembrancer of Legal Affairs.

U.R. to R.D.No. 5335. dated the 14th May 1949.

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Joint tenancy contemplates the relationship of landlord and tenant between the landlord and all thenants and sub-lessee is an assignment of a lesser term. In the present case there was no joint tenancy nor was there any sub-le-ase. It was in the nature of joint cultivation subject to certain conditions and such joint cultivation would not debar the original tenant Shadev Ganesh Astikar from acquiring the rights of a protected tenant. However on the second point the view taken by the Collector appears to be correct. The notice sent by registered post on the last date of limitation could not presumbaly have reached the landlord the same day.

Sd/- V.M.Lad
11-4

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 3990, dated the 12th April 1949.

S.A.K.
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Question whether lease of watan lands o is governed by the Bombay Tenancy Act, 1939.

In Government C.L.No. 3498-45-II/22127-F. dated 11th July 1947. Government held that service inam lands held by patels and inferior village servants would not fall under the exception provided in section 25 of the Bombay Tenancy Act. and the provisions of the said Act were applicable to such lands held by tenants. In his opinion No. 10312, dated 4th November 1948 the L.L.A. opined that the leases executed by the holders in respect of shet sama... lands were void and did not create any interest in favour of the alienees, and the question of the application of the Bombay Tenancy Act did not arise. H.D. considers that in view of this opinion of the R.L.A. the orders issued in Government letter No. 3498, dated 11th July 1947 should b. cancelled. R.L.A. is requested to advise.

Under section 25(1) of the Bombay Tenancy Act, 1939, and section 88(1)(a) of the new Bombay Tenancy Act, 1948, lands held on lease from the Crown are exempt from the provisions of these Acts. Service lands whether assigned or unassigned are not lands held on lease from the Crown. Prima facie these lands would not be exempt from the provisions of the Bombay Tenancy Act. However, the Bombay Tenancy Act intends to create under tenures by giving protection to the tenants to remain on the land subject to certain conditions. But the Bombay Hereditary Offices Act creates the principal tenure of service watan lands. Consequently the provisions of the Bombay Tenancy Act will have to be read subject to the provisions of the Bombay Hereditary offices Act. As stated by the Additional Secretar in his last opinion No. 7263, dated 30th July 1948 , the general principl of law is that when principal tenure ceases to exist, all under tenures must come to an end. and under tenures cannot survive the extinguishment of the principal tenure: see Secretary of State v. Laxmibai, 25

B.L.R. 527 and Secretary of State v. Girjabai 29 B.L. R. 1503. Service inam lands are either assigned or unassigned. Watan lands assigned under section 23 as remuneration of an officiator, and lands assigned to talvars and naikwadis for their offices, and lands given to chet sanadis for service, are lands which are intended for remuneration of the officiators, and as such must remain with the officiators. Consequently the lease of such lands will have to be treated as th tenancy Act will be inapplicable. So far as the other service watan lands are concerned section 5 of the Bombay Hereditary Offices Act prohibits a lease for a period of more than 30 years except with the sanction of the Commissioner. These lands can, therefore, be leased for a period of less than 30 years, and if this period extends beyond 30 years by reason of the extension of the provisions of the Bombay Tenancy Act to these lands, the lands can be resumed on the happening of such a contingency or on the death of the lessor whereupon the under tenure created by the Bombay Tenancy Act would be extinguished. It would , therefore, be open to the lessor or his successor invoke the aid of the Bombay Hereditary Offices Act whenever they think it possible, and if they succeed in obtaining the resumption of these lands, they would be able to get possession of these lands notwithstanding the restraints created by the Bombay Tenancy Act; and till then the se lands will have to be treated as subject to the provisions of the Bombay Tenancy Act.

Sd/-P.M.Lad
20-3

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 2791, dated the 11th March 1949.

S.A.K.
20-6
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Office of the R.L.A.

Since the matter is sub-judice the R.L.A. would not like to express any opinion. The Collector may be asked to instruct the District Government Pleader to press his point of view in the appeal pending against the Order of the Civil Judge (Junior Division), Anand. Ordinarily the jurisdiction of the Civil Court is not ousted in cases where the orders are challenged as ultra vires.

Sd/-P.K.Lad
16-5
O.C Remembrancer of Legal Affairs.

U.R. to D.O.No. 5457, dated the 17th May 1949.

S.A.K.
20-5
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R.I.No. 6163, dt. 23-4-49 .

Submitted:

2. The Divisional Tenancy Officer has in his fortnightly report dated 24-2-49 raised certain points for clarification from Govt. One of such points is whether the provision of sect. 17 of the Bombay Tenancy Act. 1939 applies to huts erected on agricultural lands .

In opposition to the view taken by the T.A.K.Nadiad (i.e. it applies only to huts in the Gramtal or Gaothan) he is of opinion that sect. 17 does apply to such huts erected on agricultural aland . The .D. favours the T.A.K.'s view & has referred the papers to the R.L.A. for advise.

S.A.K.
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Bombay Tenancy Act. 1939

Sections 7 and 17

Under section 17(1) of the Bombay Tenancy Act, 1939, an agricultural tenant cannot be evicted from a dwelling house built in the village on the site of his landlord provided certain conditions are satisfied. Sub-section (2) provides that the provisions of sub-section (1) shall not apply to a dwelling house which is situated on any land used for the purposes of agriculture from which he has been evicted under sub-section (1) of section 7. "Village" as defined in section 3 (21) L.R.C. includes a town or city and all land belonging to a village, town or city. The word used is "site" and not "land" which is defined in the Act. Sites whether within or outside the precincts of a village are included in the expression "village". Consequently, dwelling houses built by agricultural tenants on the sites of their landlords in the village whether in the enclosure or outside would be governed by section 17(1) of the Bombay Tenancy Act, 1939, provided they do not fall under sub-section (2).

Cd/-P.M.Lad
7-5-

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 4952, dated the 6th May 1949.

S.A.F.
20-6
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What was decided by the Tenancy Aval Karkun was that the present applicant was not a protected tenant and this order was confirmed in appeal by the Prant Officer. Consequently the question at A of R.D. office a to at p. 11 does not appear to arise in this case. If the applicant desires to claim protection on the ground that his lease would be deemed to be a lease for ten years, it would be open to him to claim such protection in separate proceedings.

Sd/-P.[illegible].Lad

25-4

O.C. Remembrancer of Legal Affairs.

L.R. to R.D., No. 4347, dated the 21st April 1949

L.A.K.
O-6
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R.L.No. 6164 dt. 23-4-49

Submitted .

2. The facts of the case are as in the report of the Collector of Kolaba dated 22-3-49 They are as follows:-

Mr. Bala Gotkoji Israil had made an application to the Mamlatdar, Pen on 3-5-1948 for a declaration that he was a protected tenant in respect of S.No. 27/2 of Ashte. The T.A.K.Pen who heard the application found that even though the applicant was a tenant prior to 1937 he had sub-let the land in 1935-1936 and in 1942-1943 the land was being cultivated by one Gopal Barman, and not being in continuous possession was not a protected tenant under section 4 of the Bombay Tenancy Act, 1939. He therefore rejected the application on 15-7-1948. The Prant Officer Panvel Division on appeal by the aggrieved tenant, Mr. Israil, confirmed the T.A.K.'s ex order and awarded costs of Rs. 10/- Mr. Israil has now approached Govt. for revision of the orders of the T.A.K. and the Prant Officer.

In his remarks on the revision application the Collector of Kolaba considers that T.A.K.'s order is correct and that there being no provision in the Tenancy Act for granting costs of appeal the Prant Officer's Appellate order will have to be setaside in revision. The R.D. has forwarded the papers to the R.L.A. on the point whether costs can be ordered under the Bombay Tenancy Act in this case.

Sd/- P.N.Lad
S.A.K./225-6/4 c.

Office of the R.L.A.

Bombay Tenancy Act.
Costs in tenancy cases.

There being no provision in the Bombay Tenancy Act, 1939, for awarding costs except under section 12(7) and ordering the recovery thereof, the order of the Prant Officer awarding costs in the present case is illegal.

Sd/-F.M.Lad
2-9

U.O. Remembrancer of Legal Affairs.

U.R. to R.D.No. 4840, dated the 3rd May 1949.

S.A.K.
2-6
4 copies

5176
R.I.Fo. ~~5364x~~ 5957 dt. 21-4-49

Submitted with reference to R.D. office-note on p. 5 ante.

2. The R.D. considers that section 32 and 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 are not retrospective and have referred the papers to the R.L.A. before a reply in these terms are issued to one Mr. S.B.Desai.

Sd/- H. T. Katarki

-do-

R.A.R.
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Office of the R.L.A.

Seen and returned.

The view taken by the Revenue Department is correct.

Sd/- S.M.Lad

29-4

S.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 4709, dated the 29th April 1949.

S.A.K.
29-6
4 copies

Submitted.

2. In this case one Bhakra Manshs of Fatehwadi in Dskrei Taluka who was a protected tenant of S.No. 424/1-2 of the said village has sold to one Mr. K.S.Trabadi his tenancy rights (Khed-huk) and share on account of rearing and protection of mango trees (Gotlibhag and Rakhawali-huk bhag) in the said S.No. by registered deed dated 17-2-1947 for Rs. 1,000/- The Mamlatdar, Daskroi refused to recognise the sale in favour of Mr. Trabadi and the Collector of Ahmedabad to whom the matter was referred, has ordered that the sale of Gotlibhag and Rakhawalibhag should not be recognised. Mr.Trabedi has now approached Govt. for a revision of the Collector's order, on the ground that ('land' as defined in the Bombay Tenancy Act does not include trees and as such there is no bar to sale of the mango trees to him and has conceded that in view of sect. 11 read with 13A he is not entitled to rights of Khed-huk. the Collr. of Ahmedabad considers that (1) since on the date of the sale Mr.Bhakra Mansha was an ordinary tenant and section 11 read with 13 A prohibits a tenant from alienating his rights in any way, the sale cannot be allowed or recognised; and that (2) rights of protected tenant in respect of trees planted by him are granted during the continuation of the tenancy, the alienation of the rights of rearing and protection of mango trees cannot be considered in Government records. The R.D. agrees with the Collector and has further stated that "Rakhawali Bhag" and "Gotali Bhag" which are remuneration for the protection and rearing of trees , cannot be considered as rights under the Act and being subsidiary to the tenancy cannot survive its extinction. the A.L.A. is requested to advise. S.A.R./20-6/49

Office of the R.L.A.

Bombay tenancy Act 1939 Sections 11. 13A and 19 Alienation by tenant of the right to trees.

the view taken by the Collector is correct.

"Lakhewali bhag" or "Gotali bhag" is presumed to be a right to the trees reared by the tenant. If so, it would be an inalienable right statutorily attached to a tenancy (see sections 11. 13A and 19 of the old Bombay Tenancy Act. 1939 and section 19 of the new Bombay Tenancy Act. 1948.)

Sd/-P.M.Lad
30-4

O.C. Remembrancer of Legal Affairs.

J.A. to L.D.No. 4780, dated the 2nd May 1949.

S.A.M.
20-6
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Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948. Sec. 44.

Our application to take possession under the Talukdari Act is presumably not yet disposed of; and Mr. Ginwalla is in possession under the Court's order. It would not, therefore, be legally feasible to take possession of the estates under the Bombay Tenancy and Agricultural Lands Act. The District Government Pleader may be requested to secure the Court's order on the application as soon as possible.

Sd/- [illegible]
13-5

C.C. Remembrancer of Legal Affairs.

U.O. to [illegible].No. 5358. A dated the 14th May 1949.

S.A.K.
20-6
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The view taken by Revenue Department is correct.

Ever under the old Tenancy Act it was open to a tenant to surrender possession to his landlord even before the termination of tenancy (cf. proviso to section 5(2) of the Bombay Tenancy and Agricultural Lands, Act, 1948). On such surrender the tenant would not be entitled to possession of the land within the meaning of section 29(1) of the old Act even though he has surrendered possession otherwise than on an application made to the Mamlatdar.

Sd/-P.N.Lad
24-5

O.S. Remembrancer of [illegible]

Ref. to D.O.No. 5824, dated the 25th May 1949.

S.A.L.
20-6
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Office of the R.L.A.

A sale made in contravention of the previsionsof section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948 is void. The registration of such void sales would confer no rights on the vendees and as such would be ineffective. Under the registration Act, 1908 a Sub-Registrar cannot refuse to register a document of sale merely because the transaction is void. Consequently it would not be legal to issue instructions to the Sub-Registrars to refuse to register sales which are in contravention of section 64.

Sd/-P.M.Lad
31-5

O.C Remembrancer of Legal Affairs.

U.R. to L.D.,No. 6125, dated the 1st June 1943.

S.A.V.
20-6
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Unless his lessor Keshappa was entitled to the demised land the applicant lessee would not be deemed to be lawfully cultivating the land and cannot claim the rights and privileges of a tenant under the Bombay Tenancy Act. According to the decree of the Civil Court and other documents the owner of the land was not Keshav but Dundappa from whom the appel- opponent has purchased. Consequently the applicant being a trespasser would not be entitled to restoration under the Bombay Tenancy Act. The view taken by the Prant Officer is correct.

Sd/-P.M.Lad
20-5

A.G. Remembrancer of Legal Affairs.

U.R. to H.D.No. 5091. dated the 21st May 1949.

S.A.K.
20-6
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Office of the R.L.A.

Bombay Tenancy Act, 1939
Section 3-A

Sub-lease before the Act.

It is clear from the Collector's report dated 24th March 1949, that the original lease granted by Mr. Desai to Mallappa does not contain any restriction preventing a sub-lease. Mallappa sub-leased the land to Khandu and Khandu in his turn sub-leased it to Hussain. The sub-lease in favour of Hussain took place on 25th February 1944. The Bombay Tenancy Act, 1939, was applied to Bijapur on 11th April 1946. Hussain was lawfully cultivating the land and his name has been entered in the Record of Rights as the tenant of the land. Mr.Desai has not taken any steps under section 31 of the Bombay Tenancy Act, 1939, to have his name removed. In these circumstances Hussain can be entitled to have the rights of a protected tenant, under section 3A of the Bombay Tenancy Act. The view taken in Revenue Department Office note is correct.

Sd/-P.M.Lad
7-5-

O.C. Remembrancer of Legal Affairs.

U.R. to H.D.,No. 5058, dated the 9th May 1949.

S.A.K.
20-6
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It appears that one Bechar Natha of Zamdi village in Jambusar Taluka holds certain S.Nos. on new tenure and has applied for granting him permission to lease these lands for one year. only.

2. The question raised for R.L.A's consideration is whether permission to lease for one year can be given by Government in the case.

Sd/- F.M.
Lad

S.A .K.
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This question was considered as far back as 942 . In G.R.E.D .No. 7307/33 dated 23rd June 1942. he Commissioner, C.D., was informed that in the reas to which the Bombay Tenancy Act is applied, eases of new tenure lands cannot be made for a eriod of less than 10 years in view of section 3 of the Act as it stood then, and that the uestion of amending the Act so as to allow such leases made by minors and persons who have joined the military, naval or air services under the Crown, to be for a shorter period, was separately nder consideration. Subsequently Act No. XXVII of 1942 was enacted. This view was reiterated in Government Resolution, R.D., No. 7907/33-III dated 26th August 1947, wherein it was stated that no lease of new tenure land should be for a period shorter than 10 years as required under the Tenancy Act. This view of the law is correct , and the position remains unchanged inasmuch as section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948, is substantially in the same terms as section 23 of the 1939 Act. As that section stands, it would not be feasible for Government to grant permission to a holder of tenure of land to lease it for a period of one year or for any period shorter than 10 years. If it is intended to have power for that purpose, it must be taken by appropriate legislation.

Sd/-P.N.Lad

13-5

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 5345, dated the 14th May 1949.

S.A.
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L.D.R.I.No .6168, dt. 23-4-1949

Submitted with reference to R.D. note at pp. 31-32 ante.

The short question for consideration is whether "Halis" (who constitute the bulk of the agricultural labourers in the Surat District) are tenants within the meaning of sec. 2A of the Bombay Tenancy Act, 1939 , or sec. 2(15) and 4 of the Bombay Tenancy and Agricultural Lands Act, 1948.

R.L.A. Sd/-I.M.Lad
16-5

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Seen and returned. The view taken by R.D. is Correct.

Sd/- P.M.Lad

17-5

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 5511 , dated the 16th May 1949.

S.A.K.
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The view taken by the Collector of Satara is correct. The Civil Judge (Senior Division), Satara seems to have lost sight of section 89(2)(b)(ii) of the Bombay Tenancy and Agricultural Lands Act, 1948.. The Collector may be asked to return the appeal advising the appellant to move the High Court in revision .

Sd/-P.M.Lad

11-6

O.C Remembrancer of Legal Affairs.

U.R. to H.D.No. 6430, dated the 13th June 1949.

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Legal Department.

R.I.N/O. 55:6 dt. 14-4-49

Submitted .

2. Please see H.L.A.'s opinion No. 122, dated the 5th January, 1949 wherein the H.L.A. endorsed the view taken in R.D. note on p. 3 ante, and hel that the Bombay Tenancy Act contains no provision entitli a tenant to restoration if he is illegally evicted and that section 24(1) will have no application since thereunder the Mamlatdar can restore possession to a tenant entitled to possession under the Act. The R.D. now considers that the applicant is a protected tenant and not having being evicted by an order of a competent Court on any of the grounds mentioned in section 5(2) is entitled to possession, and has referred the papers for reconsideration.

Sd/-R.T.Katarki

27-5

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Bombay Tenancy Act. 1939

Sections 4(2) and 24(1)
R.L.A.'s opinion No. 122 dt. 5-1-1949.

Mr. Patel is evidently a protected tenant and was evicted forcibly i.e. otherwise than by an order of Court on any of the grounds mentioned in section 5(2) of the Bombay Tenancy Act, 1939. His Case also falls under sub-section (2) of section 4 . He would therefore be entitled to restoration under section 24(1) read with section 4(2). R.L.A.'s opinion No. ~~1-22~~ 122 dated the 5th January 1949 may be taken as modified.

Sd/-P.N.Lad

3-6

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 6835, dated the 4th June 1949.

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R.I.No. 4623 dt. 30-3-49
& 7895 dt 19-5-49

Submitted.

2. On a reference from the Chairman of the North Kanara Land Owners Assn Kumta, the R.D. has raised the following points:

(1) Whether the T.A.K. or the M'dar yem perform ing the functions and the duties of a M'dar under the B.T. and A.L.Act, 1948, is competent to entertain applns. from the landlords for possession of land on grounds of termination of tenancy under section 14 or 34 of the Act.

(ii) what is the forum for getting relief by land-lords under section 5 and 7 of the B.T. Act, 1939, in view of the fact that now under the B.T. and A.L.Act, 1948, the jurisdiction of the Civil Court has been barred.

(iii) whether the application for possession filed by landlords with the M'dar or the T.A.K. on groun-ds of termination of tenancy under sec. 7 of the B.T. Act, 1939, and pending with them can now be tried by the M'dar or the T.A.K. in view of the provisions of secti n 89(3) of the new Act. In other words whether the applns. which were initially bad can be proper after the coming into force of the new Act.

S .A.K.

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Bom. Tenancy and Agricultural lands Act, 1948.

Sections 2(10), 29(2), 59(2) & (3).

Question 1 :- The reply to this question is in the affirmative (see section 29(2) read with section 2(10) of the Bombay Tenancy and Agricultural Lands. Act 1948).

Question 2 :- The forum will be the Mamlatdar, for section 59(2)(b)(i) saves only the right of relief and not the forum under the repealed Act.

Question 3 :- The applications pending before the Mamlatdar for possession under section 7 of the repealed Act will have to be proceeded with (see section 59(3) of the new Act) and it would be for the Mamlatdar to decide whether initially he has jurisdiction to entertain these applications.

Sd/-P.M.Lad
16-6

O.C. Encumbrancer of Legal Affairs.

U.R. to R.D.No. 6723. dated the 17th June 1949.

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Bombay Tenancy and Agricultural Lands Act, 1948.

Sections 89(2)(4). 12(5) , 30 and 76.

R.L.A.'s opinion No. 3086, dated 19-3-1949.

It is true that the order passed by the Civil Court in appeal is saved by sub-section (2) of section 89 of the Bombay Tenancy and Agricultural Lands Act, 1948; but under sub-section (4) that order would be deemed to be an order passed under the relevant provisions of this Act. Consequently it would be deemed to be an order made under section 12(5) and against that order a revision application can lie to the Bombay Revenue Tribunal under section 76. It appears from the order of the Tenancy Aval Karkun that the landlord himself admitted he never received more than Rs. 24 annually. If so, section 30 will apply and the reasonable rent fixed under the Act cannot be in excess of Rs. 24/-. The tenant may therefore be advised to apply to the Revenue Tribunal or the present application made to Government may be transferred to the Revenue Tribunal.

Sd/-P.M.Lad
19-4

O.C. Remembrancer of Legal Affairs.

U.K. to R.D.,No. 4105, dated the20th April 1949.

S.A.K.

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The view taken by the Revenue Department is correct. Since the Bombay Tenancy and Agricultural Lands Act, 1948, does not provide for a second appeal, section section 203 of the Bombay Land Revenue Code cannot be invoked and no second appeal can lie to the Collector against the order of the Prant Officer passed in appeal.

Sd/-P.M.Lad
6-5-

O.C. Remembrancer of Legal Affairs.

U.K. to R.D.No. 5032, dated the 7th May 1949.

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Bombay Tenancy Act, 1939

Transfer of Property Act, sections 53-A and 108(j).

Agreement to sale-whether rights thereunder be recorded in the Record of Rights.

The agreement of sale between Somabhai, lessee of the lands and Patel Khimjibhai provides for an absolute assignment of the former's rights with immediate possession to the latter on payment of Rs. 6000 in fifteen yearly instalments with interest. This agreement would fall under section 53A of the Transfer of Property Act and be available to Patel Khimji for maintaining his possession as an absolute assignee of the lessee's interest under section 108(j) even if a suit were filed for his eviction. Consequently Patel Khimji's name may be entered in the Record of Rights as an assignee of the lessee's rights under the lease. There being no relationship of landlord and tenant between Somabhai and Patel Khimji the orders of Government at page 9 ante, will have to be cancelled.

Sd/-P.M.Lad
2-7

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 7372, dated the 4th July 1949.

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Protected tenancy.

The Bombay Tenancy Act, 1939;

If in the present case the original tenant Shivaya Kamati who had executed the Kabulayat had done so as a manager of an undivided Hindu family, his death would not extinguish or put an end to the tenancy. The undivided family would be the protected tenant and Appaya as a member of the family would be entitled to the possession of the land on behalf of the family. According to the definition of the word "person" in section 2(6), of the Bombay Tenancy Act, 1939, a person includes an undivided family. If the tenancy of Shivaya's family ahad not been ~~at~~ extinguished, the landlord had no right to put in other tenants and they cannot acquire the rights of protected tenants. The order passed by the Prant Officer in restoring possession to Appaya is correct and should be approved.

Sd/- P.M.Lad

1-6

O.C. Remembrancer of Legal Affairs.

U.R. to M.D., No. 4159, dated the 2nd June 1949.

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R.L.No. 6333 dt. 24-6-49

Submitted:

2. Please see R.D. office note on pages 3-4-ants.

The questions for R.L.A.'s consideration are:-

(1) Whether pleaders can appear in proceedings before a T.A.K. under the B.T. & A.L.D's Act, 1948.

(2) Whether a T.A.K. conducting proceedings under the B.T.& A.L.D Act, 1948, is a court.

(3) Whether a T.A.K. is competent to entertain application from landlords for possession of land on grounds of termination of tenancy under sections 14 (read with sec. 29 and 34 of the new Act.

3. Question (1) and (2) fully covered by R.L.A.'s opinion No. 3993 dated 12-4-1949 wherein the R.L.A. held that a Mamlatdar acting under the Bom. Tenancy & A.L. Act, 1948 would not be considered as Court and that pleaders would not be entitled to appear before the Mamlatdar. 'Mamlatdar' as defined in section 2(10) of the Act includes a Mahalkari and any other officer whom the Provincial Government may appoint to perform the duties of a Mamlatdar under the Act. On such appointment being made a T.A.K. would be included in the definition of the term Mamlatdar. The legal position explained in R.L.A. 's opinion No. 3993 dated 12-4-1949 would apply mutatis mutandis in relation to the T.A.K's

Question 3: Attention of the R.D. may be invited to R.L.A.'s opinion No. 6723 dated 17th June 1949 where a similar question was considered

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Office of the H.L.A.

Bom.Tenancy Act. 1939

Bom. Tenancy and Agricultural lands Act. 1948. Sections 2(10) &14

Seen and returned.

2. The view taken by Revenue Department is correct.

Sd/- [illegible].M.Lad

26-6

C.C. Remembrancer of Legal Affairs.

U.O. to H.D.NO. 7287, dated the 30th June 1949.

S.A.K.
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R.I.No. 7541 dt. 205-49

Submitted.

2. The facts of the case are as follows:-

Mr. Vaman Rámachandra Kulkarni had made an application on 21-6-1947 to the Mamlatdar of Khanapur claiming that as he is the daughters son of and heir to the late Timaji Venkatesh Naik, who was a tenant of S.No. 104-A/2 of Khanapur from 1915 till his death in 1945 ; and that as he had also cultivated the said land himself in 1945-46 ~~x~~ he is entitled to restoration of possession of the land. The Mamlatdar, Khanapur without considering other merits of the case dismissed the application on 21-6-1947 on the ground that Mr.K. had not given the notice under section 4(?) of the Tenancy Act. After giving the notice Mr.K again made an application to the Mamlatdar and T. .K. who heard the application on 16-12-1947 held that that since Mr. K. was not cultivating the land when the Bombay Tenancy Act came into force on 8-11-1946 section 3 has no application and ~~t~~hat since he himself has held the land as tenant only in 1945-46 and the provisions of succession are not extended to section 4 he is not entitled to possession under this section either and dismissed the application

An appeal preferred before the D.D.C. Belgaum Prant was also dismissed by him. Thereafter Mr. K ~~x~~ made also-dismissed a revision application to Govt. under ~~sec~~section 28 of the Tenancy Act. B G.L. No. 8745/45.-F. dated 31-8-46 he was informed him that Govt saw no reason to interfere in the matter. Mr. K. has now again approached Govt. contending that his case falls under section 3. Relying on R.L.A.'s opinion No . 4613 dated 13-5-48.

S..A.K.
21-6- / 48

the R.D. considers that if at all Mr. K. can claim to be a protected tenant only under section 4 and even under this section the right to protected tenancy being personal and non-inheritable. and there being no provision therein similar to section 3 regarding cultivation by predecessors in title there are no reasons to consider Government's previsions orders The R.L.A. is requested to advise whether the R.D. view is correct.

R.L.A. Sd/-P.R.Lad
29-6

S.A.K.
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Bombay Tenancy Act, 1939 sections 3 & 4(1)

Inclusion of period of cultivation by predecessors in title.

The view taken in the Revenue Department Office note at on pages 47-48 ante, is correct.

2. The contention raised by the applicant in the accompanying file does not clothe him with the right of a protected tenant.

Sd/-P.M.Lad
1-7

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 7349, dated the 2nd July 1949.

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Question whether a notice under section 34 of Tenancy Act would be necessary when Government acquired the land.
Land Acquisition Act. Sec. 4,6.17.

Bombay Tenancy and Agricultural Lands Act, 1948, Secs. 34,88.

On acquisition the land has vested absolutely in Government free from all incumbrances including even the liabilities under the lease. Consequently the tenants would be liable to eviction without notice. The Bombay Tenancy and Agricultural Lands Act, 1948 not being applicable would afford on protection to the tenants. The tenants may, if a so advised seek compensation as persons interested in the land.

Sd/-P.M.Lad

15-7-1949

O.C . Remembrancer of Legal Affairs.

U.R. to A.D.Fo. 8016, dated the 16th July 1949.

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In small cause civil suit No. 82 of 1948 filed in the Court of the Civil Judge, Senior Division, Karwar, a mulgeni tenant claimed the benefit of section 15 of the Bombay Tenancy Act, 1939, but the Court held that the Bombay Tenancy Act did not apply to mulgeni tenants for the following reasons:-

(1) a mulgeni tenant is a proprietary owner of the land enjoying all rights and privileges that are normally attached to the ownership;

(2) the privileges conferred by the Bombay Tenancy Act being already enjoyed by a mulgeni tenant, the intention of the Legislature could not be to make this Act applicable to a mulgeni tenant;

(3) the application of the provisions of sections 5, 10 and 11 of the Act to a mulgeni tenant would lead to absurd results; and

(4) the obligations of a mulgeni tenant are saved by section 26 of although his rights and privileges are assured thereunder.

The R.L.A. is requested to advise whether the view taken by the Civil Judge, Senior Division, is correct.

2. A similar question was considered by the R.L.A. in his last opinion No. 12326 dated 27th December 1948, and it was held that the Bombay Tenancy Act applied to a mulgeni tenancy. But it was, however, pointed out that the recent decision of the Bombay High Court rejecting Government Criminal Appeal No. 533 of 1945 where this point was raised was likely to be construed as holding that the Bombay Tenancy Act was not applicable to mulgeni tenants. Since then there is no authoritative decision of the Bombay High Court on this point; nor has the point been taken up to the High Court from the

decision of the Civil Judge, Senior Division, in the aforesaid small cause civil suit No. 82 of 1945.

3. The view taken by the Civil Judge, Senior Division, does not appear to be correct. According to him, a mulgeni tenant is a proprietary owner of the land who enjoys all rights and privileges that are normally attached to ownership. After making this absolute statement he ultimately came to the conclusion that the authorities quoted by him gave a clear indication of the mulgeni rights in that they were akin to malki rights. To say in one breath that a mulgeni tenant is a proprietary holder and in the same breath to hold that his rights are akin to malki rights would be hardly consistent. The expression "mulgeni" means a permanent tenanet as opposed to chalgeni, a tenancy at will. Mulgenidars are the highest of those who hold not directly from Government, but under a superior-holder. Mulgenidars are permanent tenants of Kanara, who on condition of the payment of a specified invariable rent to the muli or landlord and his successors obtained from him a perpetual right of a certain portion of land to be held by them and their heirs for ever . See Dandekar's Land Tenures Vol. I p. 415. In Ganapati Nagappa V. Raghbat 22 B.L.R. 1 it was held that a mulgeni tenant is a permanent tenant who can transfer the whole of his interest. It is, therefore, clear that there is hardly any substantial distinctio between a mulgeni tenant and a permanent tenant under the Bombay Land Revenue Code so far as the transferable and hereditary interest of the ~~tenant~~ tenant in the leased land is concerned. The fact that a mulgeni tenant has a transferable and hereditable interest does not make him the full proprietary holder of the land, nor does it change the relation ship of landlord and tenant. It is true that in

S.A.K. / 2

Narayan V. Shri Ramchandra, 27 Bombay 373. It was observed that a mulgeni lease is a purchase pretanto of the interest assured. But that was an observation made in connection with the rights and liabilities created by an ex-trustee in respect of a land managed by him as a trustee. Consequently that observation would not be helpful for the determination of the point at issue. The learned Civil Judge considers that since a mulgeni tenant enjoys all the rights and privileges conferred by the Bombay Tenancy Act, the Legislature would never have intended to make that Act applicable to such tenancies. This agwa argument is not sound and is hardly tenable . It is not correct to say that a mulgeni tenant enjoys all the rights and privileges under the Bombay Tenancy Act. If that were so, the question of making that Act applicable to such tenancies could not have been pressed by any one. It is undisputed that a mulgeni tenant is required to pay rent much igher than that fixed by Government under section 15 of the Bombay Tenancy Act. It is, therefore, apparent that unless the Bombay Tenancy Act is considered applicable to a mulgeni tenant, he would not be entitled to claim reduction of rent under section 15. The Civil Judge has also held that section 5, 10 and 11 of the Bombay Tenancy Act which go to prejudice the rights of mulgeni tenants cannot be made applicable to such tenants, and when these sections are n t applicable to mulgeni tenantss, it would be unwise to say that section 15 only is applicable to such tenants. It appears that he has not properly understood the implications of section 26 . That section saves the rights and privileges of a tenant under any other law. It is, therefore, clear that if the rights and privileges of a mulgeni tenant under ordinary law are higher than those confer conferred on the tenants under

the Bombay Tenancy Act, these rights and privileges would prevail. The liabilities according to the Civil Judge are not saved by section 28 . It is not so. The Act intends to save higher rights and privileges of a tenant under ordinary law and at the same time curtails his liabilities. In the new Bombay Tenancy Act of 1948 this point is made clear. Section 27(1) provides:

> "No sub-division or sub-letting of the land or assignment of any interest held by a tenant shall be valid. Such sub-division, subletting or assignment shall make the tenancy liable to termination:
>
> Provided that nothing in this sub-section shall prejudicially affect the rights of a permanent tenant or any tenant the duration of whose tenancy is presumed to be co-extensive with the duration of the tenure of the landlord under section 83 of the Land Revenue Code, 1879."

This provision is a clear reply to all the points raised by the Civil Judge. Consequently it appears that the Bombay Tenancy Act does apply to a mulgeni tenant, and the decision of the Civil Judge is not correct. An early opportunity may be taken to have this matter authoritatively decided by a competent Court.

54/-P.N:Lad
5-5-49

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M.M.,R.D.

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No. 5481
Office of the
Remembrancer of Legal Affairs..
Bombay Castle, 17th May 1949.

Subject:- O.S .No. 82 of 1948 in the Court of Civil Judge, Senior Division, Karwar :Re: application of the Bombay Tenancy Act to Mulgeni Tenants.

MEMORANDUM:

With reference to the subject noted above, the District Government Pleader, Kanara is informed that the Remembrancer of Legal Affairs is of opinion that the Bombay Tenancy Act applies to mulgeni tenants and that decision in the above suit is not correct. The District Government Pleader is therefore instructed to request the court to make a reference to the High Court when a similar case arises in future.

Sd/-R.P.Kakarki

for
I.C. Remembrancer of Legal Affairs.

to

The District Government Pleader..
Kanara.

S.A.K.
21-6
4 copies

Submitted.

2. In his opinion No. 4720, dated the 2nd May 1949, the A.G.A. observed that "Kathewalibhag or 'Gotali bhag' is presumed to be a right to the trees reared by the tenant" and further advised that "if so, it would be an inalienable right [illegible] attached to a tenancy" pointing out attention to sec. 11, 13A and 19 of the old Bombay Tenancy Act, 1939 and section 15 of the new Bombay Tenancy Act, 1948. In his letter dated the 1st July 1949, the Collector of Ahmedabad to whom Govt. pointed out the legal position as above, has stated that:-

"Gotlibhag" is a right or share to the trees on account of rearing trees by the tenant and 'Kathewalibhag' is a share (or remuneration) for protecting trees, especially the fruits. This 'Kathewalibhag' does not necessarily go with tenancy.

In this case as 'Kathewalibhag' does not go necessarily with tenancy, the applicant cannot, it is presumed, seek relief under the B.T.Act. Moreover, this right is inalienable under sec. 11 of the B.T.Act. As regards 'Gotlibhag' it is presumed that the tenant cannot alienate it as the right to the trees planted by a protected tenant are sufficiently protected by Government by making a provision for compensation ~~xxx granting~~ to the protected tenant."

The U.S. H.D. observes:

"I do not understand the Collector's argument that 'Kathewalibhag' which does not...

not go with the tenancy is inalienable"

and has requested the R.L.A. to state

whether the applicant's request to recognise

his right in the Record of Rights in

respect of 'Rakhevalibhag' which he has

purchased, can be accepted.

3. Under the circumstances explained

by the Collector in his letter dated 1st

July 1949 it is possible to hold that

"Rakhevalibhag" can be independent of tenancy

rights and as such would not be governed

by the provisions of the Tenancy Act.

Consequently there would not be any objection to

its sale by a protected tenant and to

recognise such right of the purchaser in the

record of rights.

Sd/-P.Y.Chaudhari

29-7

A.L.R.

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Bombay Tenancy Act, 1939.

Sec. 20(1). R.L.A.'s opinion No. 4780, dated 2-5-49.

...walibag" would be in the nature of a right contemplated by section 20(1) of the new Tenancy Act and as such this right also would be inalienable. The view taken by the Collector is not correct.

Sd/-P.N.Lad
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(.L. Deputy Secretary of Legal Affairs.

U.R. to R.D.Pe. 6660, dated the 2nd August 1949.

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Bombay Tenancy Act, 1939 Sec. 3. Explanation1.

It appears that the applicant was living joint with his father in whose name the leage was taken. The past landlord landlord admits that the applicant did agricultural work under the supervision of is father. Explanation 1 to section 3 of the Bombay Tenancy Act, 1939 contemplates the benefit of protected tenancy even to the successor of the original tenant. There would therefore be no legal objection to recognising the applicant as a protected tenant of the lands.

Sd/ P.K.Lad

26-7

. O.C. Remembrancer of Legal Affairs.

L.R. to A.D.,No. 6451, dated 27th July 1949.

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The view taken by R.D. is crrect.

2 A cugar factory being an industrial undertaking and the lands taken on lease by it being for its benefit, section 88(1)(b) of the Bombay Tenancy and Agricultural Lands Act will apply and such lands would be exempt from the provisions of the Act. It would be competent for the factory to sub-lease the lands without any risk of the termination of the lease and such sub-lease can be for any period provided it is shorter than the lease period.

The Bombay Tenancy and Agricultural Lands Act, 1948. Sec. 88(1)(b).

Sd/-P.M.Lad
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O.S Remembrancer of Legal Affairs

U.R. to R.D.No. 6336, dated 23rd July 1949.

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R.I.No. IIII2 dated 24-5-49.

Submitted:

2. On the fortnightly report of the Divisional Tenancy Officer the R.D. has considered various points raised therein. Under point (IV) the D.T.O. has solicited Government orders as to whether the form of notices for attendance of defendats prescribed under section 14 and 16 of the Mdm M'dars Courts Act can be used with suitable amendments for the proceedings under the B.T. & A.L.Act. 1948. and whether the fees prescribed for serving notices under that Act can be charged for serving notices the Tenancy proceedings. On this point it is stated in the R.D. note as follows:-

"(IV) Sec. 72 of the B.T. & A.L. Act. 1948 states that" in all inquiries- inquiries and proceedings commenced on the presentation of applications under Sec. 71. the M'dar or the Tribunal shall exercise the same powers as the M'dar's Court under the M'dar Courts Act. 1906. and shall follow the eri provisions of the said Act. as if the M'dar or the Tribunal were a M'dars Court under the said Act and the application presented was a plaint presented under Sec 7 of the said Act."

As the M'dar has to follow the provisions of the M.C.Act in the disposal of the applications filed under the Tenancy a Act it follows that they can use the form of notices for attendance of defendats prescribed in secs. 14 & 16 of the M.C.Act with suitable modifications This would be perfectly legal.

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Bombay Tenancy and Agricultural Lands Act, 1948.

Mamlatdar's Court Act, 1906.

Forms of notices to defendants and process fees.

Seen and returned.

The view taken by Revenue Department on point (IV) is correct.

Sd/- P.N.Lad
97

Remembrancer of Legal Affairs.

U.P. to R.D.No. 7655, dated the 9th July 1960.

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Bombay Tenancy Act. 1939.

Section 4(1). on eviction.

To constitute eviction it is not necessary that the lessee should be forcibly dispossessed (see Jogendra lal V.Maheshchandra, 5 Cal 1013), but / what will suffice for the purpose is that there must be substantial interference by the landlord with the tenants's enjoyment even if there is no complete dispossession (see R.L.A.'s opinion No. 3491, dated the 31st March 1949). In the present case the applicant gave up possession as he was unwilling to pay the stipulated rent. Apparently therefore there could be no eviction of the applicant within the meaning of clause (a) of section 4(1) of the Bombay Tenancy Act, 1939.

Sd/-P.M.Lad

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O.C. Remembrancer of Legal Affairs.

U.K./ to R.D.No. 7523, dated the 7th July 1949.

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Bom. Tenancy Act. 1939. Sections 9 and 24(1A).

Section 9 of the Bombay Tenancy Act. 1939 implies power of the landlord to xxx discontinue the tenancy provided no notice is given by the heir or heirs of the deceased tenant within the prescribed time. In the present case no such notice was given by the heir or heirs of the deceased and the landlord decided to discontinue the tenancy. which is evident from the application made by him for possession. When he so decided. the relationship of landlord and tenant ceased and consequently section 24(1A) which requires a landlord to apply to the Mamlatdar to obtain possession of land from his tenant could not apply. Besides as has been recently held by the High Court in a reference from a Civil Judge the object of section 24(1A) is to prevent landlords from obtaining surrender of tenancies by fraud. coercion. or undue influence and does not oust the ordinary jurisdiction of the Civil Court. Consequently the forum which the landlord should have approached in this case was either the Civil Court or the Mamlatdar's Court for possession on the ground that the heirs of the deceased tenant were withholding possession of the land wrongfully and without any right. The Tenancy Mamlatdar could not therefore award possession and his order may be set aside.

Sd/-P.M.Ltd
23-8

O.C. Remembrancer of Legal Affair

J.L. to R.D..No. 9536. dated the 24th August 1945.

S.A.K. /21-6

Office of the R.L.A.

The view of taken by H.M.. H.D. is correct. Joint tenants have unity of title, unity of commencement of title, unit of interest so as in law to have equal shares in the joint estate, unity of possession as well of every part as of the whole and right of survival. Where land is jointly demised, notice to quit signed by one of the lessors was held a notice by all to quit the whole (see Doed Aslin v. Summersett 1830; see Woodfall's Law of Landlord and Tenant). A fortiori, where land is jointly demised, notice to restore possession by one of the joint lessees would be a notice by all joint lessees to restore possession of the whole. Consequently, the notice to restore possession given by Mallappa under section 4 of the Bombay Tenancy Act, 1939, could have been treated as a notice on behalf of all the joint tenants for possession. However, the other joint tenants appear to have given up their rights by surrender which has not been disputed by any. Nor have they shown any inclination, expressly or by implication, to continue joint tenancy. At common law a joint tenant may could make a lease of his share alone constituting a tenancy in common during the between the lessee and the other joint tenants as well as in joint lease of the whole. So if one joint tenant made a lease of his moiety and died before the lessee's entry, the lease would bind the survivor and the lessee would retain interest in the moiety at least until his term expired. If one of two joint tenants made a lease of the whole, his moiety only will pass (see Woodfall's Law of Landlord and Tenant, p. 60). The same principle is stated by Mulla in his Transfer of Property Act at page 218 thus:

"A joint tenancy may be severed and converted into a tenancy in common by one of the joint tenants disposing of or contracting to sell his interest or by mutual agreement or by course of dealing by all the joint tenants sufficient to indicate a severance."

The failure of the other joint tenants in claiming restoration of the lands and the surrender of the lease by them would have the effect of countermanding the protected tenancy of the ex lands in respect of their shares. The effect of that would, therefore, be that Mallappa would be considered a tenant-in-common in respect of his one-fourth share in the demised lands. A tenant-in-common is entitled to joint possession and if excluded from such possession may sue for a declaration of his right. But if there is no exclusion or denial of his right, a tenant in common who gives up joint possession has no right of suit for his share of joint profit (see Radhakant v. Manmohan 60 Calcutta 282). Consequently Mallappa can be given joint possession of the demised lands so that he may enjoy his share of joint profits and if the landlord is unwilling to admit him to such joint tenancy, Mallappa should be given his one-fourth share in the demised lands after partition by metes and bounds.

Sd/-r.M.Lad
26-7

O.C Remembrancer of Legal Affairs.

U.O. to R.D.No. 8545, dated the 29th July 1949.

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Question whether Government is a tenant within the meaning of section 2(18) of the Bombay Tenancy and Agricultural Lands Act, 1948

It appears that Mrs. Saraswatibai G. Manduskar has requested the Director of Agriculture to grant her a bonus of Rs. 50/- per year in respect of land measuring 37½ Gunthas taken on lease by the Rice Breeding Station at Karjat on a rent of Rs. 50/- per annum. The Director of Agriculture has recommended this bonus in view of the high cost of living and increase in price of agricultural produce. R.D. considers that since Government has taken the land on lease Mrs. Saraswtibai would be entitled to the maximum rent payable under section 6 of the Bombay Tenancy and Agricultural Lands Act, 1948 and if she is dissatisfied with the rent agreed upon she may apply to the Mamlatdar for fixation of rent under section 12. The R.L.A. is requested to advise whether Government can take advantage of section 6 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Section 6 of the Bombay Tenancy and Agricultural Lands Act, 1948 provides for the fixation of the maximum rent. Under section 7 the rent payable by a tenant shall subject to the maximum rent fixed under section 6 be the rent agreed upon between such tenant and his landlord or in the absence of any such agreement the rent payable according to the usage of the locality etc. 'Tenant' as defined in section 2 clause 18 means an 'agriculturist' who holds a land on lease and includes a person who is deemed to be a tenant under the provisions of the Act. 'Agriculturist' as defined in clause (2) means 'a person who cultivates land personally.' The expression 'to cultivate ~~an~~ personally' ~~own account (i) by~~ is defined in clause 6 as meaning 'to cultivate on one's own account-(i) by one's own labour or (ii) by the a labour of any member of one's own family or (iii) by servants on wages payable in cash or kind, but ~~a~~ not in crop share or by hired labour under one's personal supervision of the personal supervision of any ~~man~~ or of one's family.'

S.A.K./21-6 4 copies

No doubt Government has taken the land on lease, but Government would not be deemed to be a tenant within the meaning of section 2 clause (15) unless it falls within one of the sub-clauses (i) to (iii) of clause (6) of section 2. Obviously sub-clauses (i) and (ii) will have no application. Under sub-clause (iii) cultivation must be by servants on wages payable in cash or kind under one's personal supervision or personal supervision of any member of one's family. No doubt Government cultivates the land by servants on wages payable in cash but the supervision is exercised over these servants not by Government itself but by its own servants. Supervision by servants would not be personal supervision within the meaning of sub-clause (3). Consequently, Government would not be a tenant within the meaning of section 2 clause (15), and, therefore, cannot claim the benefit of section 6.

Under section 55 sub-section (1) clause (5) lands held on lease from the Crown are exempted from the provisions of the Act. There is no express provision in the Act to support the converse of it, that is, the lands held on lease by the Crown.

The question whether the Crown can take advantage of the Act while not being bound by the provisions of the Act is a moot point which was raised in Caymar Irine and Co. v. Board of Trade (1927, 1, K.B. 269), but was not finally decided. (See R.L.A.'s opinion No. 9205, dated 18-12-46). However, in view of the definition of the term 'tenant' it appears clear that the Crown would not be able to take advantage of the provisions of the Act and claim protection of section 6.

Sd/-P.N.Lal
20-8

O.C. Remembrancer of Legal Affair

U.O. to R.D.No. 9404, dated the 22nd August 1949. S.A.K./21-8

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Se n and returned.

The view taken by Revenue Department is correct. Attention is also invited to section 4(c) of the Bombay Tenancy and Agricultural Lands Act, 1948 whereunder a mortgagee in possession cannot be considered a tenant even though he is in lawful possession of the land.

Sd/-P.M.Lad
10-8

C.C. Remembrancer of Legal Affairs

U.O. to R.D.No. 9050 , dated the 11th August 1949.

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Bombay Tenancy Act, 1939.

Section 24A

The order of the Tenancy Aval Karkun restoring possession to Mr. Ambalal and his brother is not lawful as it would not be covered by section 24A of the Bombay Tenancy Act, 1939. There would therefore be no legal objection to setting aside that order. The protected tenants cannot be awarded possession of the lands in these proceedings which are instituted under the old Act and to which they are not parties. They may be advised to apply for possession under the new Act.

Sd/-P.M.Lad
23-8

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 9530, dated the 24th August 1949..

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S.A.S.

It appears from the Collector's report at pp. 1-5 that in this case owing to along standing dispute between two Jahagirdar regarding the ownership of certain survey Nos. some 900 bhigas of a land of these survey Nos. have been lying fallow for the last 20 years. The Revenue Deptt. proposes that the management of the land in question should be assumed under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948. The land is admittedly a jahagir land and belongs tothe Jahagirdars or land holders within the meaning of sub-section (9) of section 2 of the Act. Section 44 of the Act is a special provision enacted for the purpose of assuming management of a land holder's estate, and although section 65 is wide enough to embrace lands belonging to land holders, it would be desirable to have recourse o to section 44, which, as stated before, is a special provision applying to land-holders. Under that section power has been given to the Provincial Government to assume managment of the landholder's estate for ensuring the full and efficient use of land for agriculture. As the land in question has been lying fallow for the last 20 years, it will be possible to have recourse to section 44 and assume management thereof after following the procedure of publishing a notification as required by the section. Under that section a notification announcing, the intention of Government to assume management of the lands will have to be published in the Official Gazette, and the Collector shall have to give notice of the substance of the notification at convenient places in the locality where the land is situate. The section does not require any serving of notices upon the land holders. The

difficulty felt by the Collector about issuing

of notices to land holders is not therefore real.

Sd/- S.L.Chaudhary

7-9

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The view taken by the Revenue Department is correct

Sd/-P.M.Lad
13-9

O.C. Remembrancer of Legal Affairs.

L.R. to R.D.No. 10432. dated the 15th September 1949.

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Remission of land revenue
Bombay Tenancy & Agricultural Land Act, 1948.
S. 13.

R.L.A.'s opinion No. 11110 dated 21-11-1947.

It appears that Government proposes to remit 10% of land revenue demand for the revenue year 1948-1949 in order to commemorate the integration of Baroda State with this Province. The question raised for consideration is whether the landlords can be required to pass on the benefit of such remission to the tenants under section 13 of the Bombay Tenancy And Agricultural Lands Act, 1948, when that Act is to be applied to Baroda State with effect from 1st August 1949. Revenue Department considers that section 13 cannot be given retrospective effect, and consequently the benefit of remission sanctioned for the year 1948-1949 cannot be required to be passed on to the tenants. That department also considers that it is doubtful whether if the Bombay Tenancy and Agricultural Lands Act is applied to Baroda State before the expiry of the current land ~~re~~ revenue year, i.e. by 31st July 1949, its provisions can be applied to the land revenue collections for the current year which have already been made.

2. If the benefit equivalent to the exact sum of remission in the land revenue is required to be passed on to the tenants, the proposal would not be legally feasible. See R.L.A.'s opinion No. 11110 dated the 21st November 1947. If, however, the intention be to give the tenant a reduction proportionate to the remission in land revenue, then the question of the applicability of section 13 of the Bombay Tenancy and Agricultural Lands Act, 1948, will arise. That section cannot be given retrospective effect, and consequently, if the Act is to be applied with effect from 1st August 1949, the benefit of

remission of land revenue granted to the landlords in respect of the a land revenue collections for the year 1948-1949 cannot be required to be passed on to the tenants under section 13. If, however, the Act is to be brought into force before the end of the revenue year, that is, before the end of July 1949, the benefit of remission of land revenue would be required to be passed on to the tenants by a proportionate reduction of rent to be recovered thereafter, that is, after the Act is brought into force. If, however, by that time the rent is already recovered from the tenants by the landlords, it is doubtful whether the benefit of remission of land revenue can be required to be passed on to the tenants who have already paid the rent. For, although it is arguable that when the landlords are given a remission of land revenue o in respect of the year 1948-1949, there is no reason why the tenants should not get the benefit of a proportionate reduction in the rent under section 13. But sub-section (5) of section 13 provides that the landlord shall be liable to refund to the tenant the amount recovered by him in contravention of this section. When the rent was recovered the Act was not in force and consequently it would be equally plausible to argue that the rent not being recovered in contravention of the provisions of section 13, the landlord would not be liable to refund. In view of this doubtful legal position, it appears safer to order the remission of land revenue for the year 1949-1950 so that all tenants would in any circumstance get the full benefit of a proportionate reduction of rent under section 13.

Sd/-P.M.Lad

U.R. to R.D.No. 7458, dated the 5-7 5th July 1949. S.A.K./ 2

Bombay Tenancy Act 1939.
Sections 2A & 3A

Rights of Sub-tenants to protected Tenancy.

As a Hindu widow, Mrs. Godubai Aranake was holding survey Nos. 157, 158 and 87/18 of Ankle, Taluka Hukeri, District Belgaum. She leased out these lands to one Vithalrao Kulkarni for a period of 30 years under a registered lease dated the 9th April 1932. On the death of Godbubai on 2nd May 1938, the Aranake Brothers succeeded to these lands as reversioners and allowed the lands to be continued under the lease of 1932. However, on the Bombay Tenancy Act being applied to the District of Belgaum, they filed an application to the Tenancy Aval Karkun for a declaration under sections 2A and 3A of the Bombay Tenancy Act, 1939, that neither the tenant, Vithalrao Kulkarni, nor his sub-tenants, Bhima, Rama and Satappa, were protected tenants or ordinary tenants. It is admitted that Vithalrao sub-leased these lands to Bhima, Rama and Satappa several years ago and these sub-tenants have been actually cultivating the lands. The Tenancy Aval Karkun rejected the application of the Aranake Brothers and that order was confirmed in appeal by the Prant Officer. The Aranake Brothers have now applied to Government in revision. The Collector in his report has stated that the sub-tenants, Rama, Bhima and Satappa (respondents 2 to 4) who have come on the land through the main tenant, Vithalrao (respondent No. 1) cannot be considered as tenants within the meaning of section 2A, nor can Vithalrao, Respondent No. 1, be so considered since he has sub-leased the lands and consequently the Aranake Brothers are entitled to the declaration sought under sections 2A and 3A.

4 The Revenue Department is inclined to agree with

S.A.K.
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the view taken by the Collector. Remembrancer of Legal Dep- Affairs is requested to advise.

It is true that there is no privity of contract between the landlord and the sub-tenants. But section 2A of the Bombay Tenancy Act creates a statutory tenancy in favour of persons who were lawfully cultivating the land belonging to another on the day on which that provision came into force. It is immaterial whether Rama, Bhima and Satappa (respondents 2 to 4) were cultivating the land as sub-tenants of Vithalrao, so long as they were holding the lands lawfully. From the time section 2A came into operation, these sub-4 tenants could claim to be lawfully cultivating the lands of the owner and entitled to the rights of a statutory tenant. They could be considered statutory tenants, with the result that the original tenancy would be deemed to be extinguished, releasing the tenant, Vithalrao, from all his liabilities under the lease. The rent payable by the sub-tenants (respondents 2 to 4) would be equal to the maximum rent fixed by Government under section 15. The question whether the lease survived after the death of Gedubai would not arise because the sub-tenants (respondents 2 to 4) would be claiming t rights of statutory tenants under the Act and not those of tenants under any lease . Consequently, the view taken by the Collector is not correct. The applicants would be entitled to the declaration sought. The sub-tenants (respondents 2 to 4) should be treated as protected tenants under section 3A read with section 2Aof the Bombay Tenancy Act.

Sd/-P.K.Lad
11-17

U.C. Remembrancer of Legal Affairs.

U.B. to R.D.No. 7801, dated the 12th July 1949/
S.A.K. / 21-6/4 C.

Office of the R.L.A.

Bombay Tenancy Act. 1939.

Sub-tenancies after coming into force of the Act.

Unless the usage or the terms of the lease expressly prohibited the sub-lease there would be no legal objection to holding the sub-tenant as lawfully in possession and as such a protected tenant in these two cases (see clause (j) of section 108 of the Transfer of Property Act).

Sd/-P.M.Lad
10-8

O.C. Remembrancer of Legal Affairs.

U.R. to H.D.No. 9051, dated the 11th August 1949.

B.A.K.
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Submitted.

2. The facts of the case are there:

The lands involved in this case i.e. S.Nos. 414/11 415.322.2[illegible]3.and 354 of village Kondhave-Dhavle. Taluka Haveli. Poona Dist.. are owned by one Dr. Sathye of Poona; and under a registered lease dated 13-11-1941 have been leased to one Mr. C.V. Pendse for a period of 25 years . It appears that Mr. Pendse sub-leased, S.Nos. 414/1. and 415 to one Hari Narayan Suryatil by a registered lease dated 30-1-1946 for a period of four years; and S.Nos. 322, 323 & S.No. 354 , to one Maruti Mayaji Ghosale and one Shiva Maruti Dhavle respectively on oral agreements for 11 months during 1946-1947; The Bom. T(Amendment) Act. 1946 came into force on 8-11-1946 and on 6-11-1947 Mr. Pendse made an application to the Mamlatdar Haveli for a declaration that his sub. tenants are not protected tenants etc. The Mamlatdar dismissed this application on 15-5-1947 on the grounds that it is only the landlord that is entitled under sections 2A and 3A of the B.T.Act. 1939 for the declaration asked for and Mr. P. being a tenant he was not entitled for that. Mr. Pendse considering that his application was dismissed because it was application for all the tenants he made three separate application dated 19-5-1948 in respect of each of the sub. tenants and again requested the Mamlatdar for similar declaration. The declaration was again refused by the Mamlatdar on 11-6-1948 on the same grounds as before. The appeal to D.D.C .Naval Prant was also rejected. Mr. Pant Pendse has now approached Govt. in revision. His main contention now being that his position is that of a landlord in respect of his sub-tenants and therefore he is entitled for the declaration . The

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R.D. is inclined to view that the definition of the term "Landlord" in section 3(15) of the L.R Code would apply for the interpretation of the term section 3A of the Tenancy Act and consequently Mr. would be entitled for the declaration asked for.

The R.L.A. is requested to advise.

S.A.K.
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Bombay Tenancy Act, 1939.
Sections 2A and 3A.

By virtue of section 2-A of the Bombay Tenancy Act, 1939, the sub-tenants became statutory tenants with the result that the original lessor Dr. Sathye ~~with the result that the original lessor Dr. Sathye~~ could apply under section 3-A as he alone could thereafter be considered the landlord (see R.L.A.'s opinion No. 7801, dated 12-7-1949).

Sd/- P.M.Lad
23-8

O.C. Remembrancer Of Legal Affairs

J.K. to R.D.No. 9540, dated the 24th August 1949.

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Bombay Tenancy Act. 1939. Section 7. Bombay Tenancy and Agricultural Lands Act. sections 89(3) and 76(1).

The appeal for restoration of the land under section 7 of the Bombay Tenancy Act. 1939 was pending before the Prant Officer when the Bombay Tenancy and Agricultural Lands Act. 1948 came into operation. Consequently section 95(3) of the latter Act will apply and Government has no jurisdiction to entertain the revision application against the order of the Prant officer. The Bombay Revenue Tribunal will have ~~jurisdiction~~ jurisdiction under sectic 76(1).

Sd/-P.N.La
9-8

S.C. Remembrancer of Legal Affairs.

U.R. to R.S.No. 5014, dated the 10th August 1949.

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The Bombay Tenancy Agricultural Lands Act, 1948.

Sections 7,14, 30 and 34.

The first point raised by Mr. Chaudhari that in cases where the rent is agreed between a landlord and a tenant, it cannot be increased. This view is correct. Section 7 of the Bombay Tenancy and Agricultural Lands Act, 1948 provides that the rent payable by a tenant shall be in the first instance, the rent agreed upon between him and his landlord. If there is a dispute about the reasonableness of such rent, then only an inquiry as to what is reasonable rent is to be held. But even in such inquiry under section 30 the rights of a tenant arising out of the contract with the landlord cannot be limited or abridged. If, therefore, the rent agreed upon between a landlord and a tenant can be definitely ascertained, a tenant cannot be made liable to pay a higher rent. Th rent fixed by Government is the maximum of the rent leviable. The agreed rent can be reduced, if it exceeds the maximum so fixed. But it cannot be increased in any case.

2. As regards the second point, section 34 of the Bombay Tenancy and Agricultural Lands Act which permits a landlord to terminate the tenancy of a protected tenant does not override the general provision in section 30 which entitles to the rights and privileges of his contract with the landlord. Section 34 is included in the Chapter headed the Special rights and privileges of a protected tenant and excludes the operationof section 14 of the Act only, while section 30 overrides all other provisions. In these circumstances the tenancy of a protected-

tenant who under the contract with his landlord is entitled to remain on the land for a period of 19 years cannot be terminated earlier. The view taken by Mr. Chaudhari on this point also is correct.

Sd/- J.R.Dhurandhar,

27-7

O.C. ~~Remembrance of~~
Additional Secretary to Government .

S.A.K.
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U.R. to R.D. No 8525 dt. 27th Jul

Office of the R.L.A.

Bombay Tenancy Act, 1939. section 4(1) and 9(1).

Since the deceased tenant xx voluntarily went out of possession after the expiry of the lease., there was no eviction within the meaning of section 4(1) of the Bombay Tenancy Act, 1939. The view taken by Revenue Department on this point is correct.

The continuation of the application by the son of the deceased tenant might be treated as a notice under section 9(1). This point does not however arise in view of the reply to the first question about eviction.

Sd/-P.M.Lad
24 25-8-

C.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 9565, dated the 24th August 1949.

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Office of the R.L.A.

It is true that in taking cognizance of the suit and making inter-locutory orders the learned Civil Judge has exercised jurisdiction not vested in him by law. Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948, ousts the jurisdiction of the Civil Courts to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar etc. The question as to possession and the question whether a person is a tenant or a protected tenant are matters to be decided by the Mamlatdar under section 70 of that Act. It is, therefore, clear that the learned Judge has erred in assuming jurisdictionin this suit. However, his error can be corrected only judicially, i.e. by appeal. It would not be feasible to issue any executive instructions to him. The tenant has misconceived his remedy in applying to Government inthis matter. His proper remedy was to prefer an appeal against the order. However, it may be considered whether any reference should be made to the High Court requesting Their Lordships to issue instructions to the Judicial Officers inviting their attention to the relevant provisions of the Bombay Tenancy and Agricultural Lands Act, ~~1948~~ 1948 and to refrain from exercising jurisdiction which is clearly ousted.

Sd/-P.M.Lad
6-9

C.C. Remembrancer of Legal Affairs.

J.R. to R.D.No. 10156, dated the 6th September 1949.

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R.I.No. 12267/49

Legal Department.

Submitted.

2. The Board of Administration, Sheriffs Mandas Relief Fund has been granting a pension of Rs. 5/- per month per dependent of the those drowned with the S.S.. Mandas and at its meeting held on 17-1-1949 has decided to grant lands in lieu of these pensions to certain persons. To implement h this decision. Govt. has decided that as regards the grant of lands the sales should be completed by the Mamlatdar on behalf of Govt. and these lands handed over to the pensioners concerned on new or impartible Tenure and the Mak Mamlatdars concerned hav-e been directed to see that Govt. gest a clear title to the lands before they are handed over to the persons concerned. Regarding these sales the Colr. of Kolaba has invited attention to sects. 63 and 64 of h the Bom. Tenancy and Agricultural Lands Act, 1948 and stated that in vi-ew of these provisions the sales would be void and as r wy out suggested that befo-re handing over possession of the lands o to the persons concerned relinquishment in favour of Govt. should be accepted from the occupants of the lands concerned under sect. 73 of the Land Revenue Code, after paying the purchase amount. The R.D. has requested the H.L.A. to state whether this view is correct.

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x slip p. in R.D. file below.

pp. 180-83-de-

x slip B.p. 285 ante in R.D. file below

Legal Department.

I do not agree with the view that sections 63 and 64 of the Bombay Tenancy and Agricultural Lands Act, 1948, are binding on Government. It is true that under section 88 of the Act, Crown leases are excluded. But that does not mean that the other provisions bind Government. But apart from this question in view of the recommendations of the Committee that the lands should be purchased by Government, that they should be purchased free of encumbrances and that Government should grant them on restricted tenure, it will be desirable for Government to acquire them under the Land Acquisition Act, 1894, out of the Government revenues first. The Committee will have to agree to reimburse Government the expenditure which will be incurred in that connection. Such acquisition will enable Government to acquire lands free from encumbrance and to grant them on restricted tenure.

Sd/- J.R.Dhurandhar

16-9

U.C. Additional Secretary to Government.

U.R. to R.D.No. 10558, dated the 17th September 1949.

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Bombay Tenancy & Agricultural Lands Act, 1948.

Additional Secretary's Opinion No. 8525 dated 27-7-49.

Attention of Revenue Department is invited to the Additional Secretary's recent opinion No. 8525 dated 27-7-1949 where a similar question raised by Mr. B.C.Chaudhari, M.L.A. is considered. No amendment of the Act would be necessary for the purpose.

Sd./-P.M.Lad
1-3

O.C Remembrancer of Legal Affairs.

U.R. to R.D.No. 8685, dated 2nd August 49.

S.A.K.
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4 copies

R.L.No. 14611
Dated 9th September 1949.

Submitted.

The facts of the case are as follows:

The Inam village of Parnali in the Palghar Taluka was originally granted by Government [The East India Company] to one Vicaji Meherji in 1829 in consequence of his having constructed some ~~in~~ benevolent works. In 1841 a Sanad (Inam Patra) was given to the holder for full enjoyment of the Inam. This Inam village with all structures thereon was purchased for Rs. 75,000/- by Sardar Khan Bahadur Haji Amir Sahib Rais of Manor in Palghar Taluka in 1930 at a High Court sale by public auction to satisfy a decree against the said Vicaji Meherji. By Government Resolution Revenue Department No. 7526 /33, dated 22nd June 1934 Government accepted H.L.A.'s advise contained in his opinion No. 4328 4329 dated 11th May 1935 that the inam granted to Vicaji is alienable and directed that the Inam village be transferred in the name Sardar K.B.Rais. Some villagers (of this Inam village) have represented to H.M.(E) that they would pay the land revenue direct to Government instead of to the Inamdar and that they are not liable to pay the rent presumably contending that they have ownership rights in their holdings. The villagers have not paid rent to the Inamdar and refuse to pay and under this- these circumstances the Collector of Thana has proposed to Government that man-agement of the village may be taken over under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948.

The H.L.A. is requested to advise in the matter.

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It appears from the concluding clause of the Inam patra that it is a grant not of revenue but of soil for the words "all 'Babs' and 'Kanus' together with the water, trees, grass, wood, stone, the treasure buried in the ground" mentioned therein are clearly indicative of the grant being one of soil. It is true that by clause 3 of the claim of the Ryots on land, trees, grass, water, etc., as it was in the charge of Government has been preserved. This only means that the rights obtained by the cultivators in respect of lands, etc., are to be maintained. Such rights would obviously be those which are acquired by permanent tenants or by agreement. The rights acquired by such cultivators, if any, will have to be ascertained separately and determined. But the cases of such cultivators will be few and far between and, at any rate, their liability to pay the rent to the Inamdar would remain unaffected, for whatever they pay to the Inamdar, though in some cases it may be equal to the assessment, will have to be termed as rent.

It appears from the report of the Collector that there exists a dispute between the Inamdar and the tenants in respect of the rent and the dispute is likely to lead to deterioration in cultivation affecting the economic and social conditions of the peasants and there would, therefore, be no legal objection to Government assuming the management of the estate under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/-P.M.Lad
16-9

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 10571, dated the 19th September 1949.

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I am not in favour of supplying the circulars. It is not politic to establish a precedent of supplying to the High Court confidential executive instructions. Besides, in this particular instance the circulars may give rise to unnecessary controversy.

2. Instead, the High Court may be informed that a Mamlatdar or a Mahalkari empowered to hold proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948, is not a Civil or Criminal Court, nor a Court or Tribunal or a public officer before whom pleaders are entitled to practice under section 7 or 8 of the Bombay Pleaders Act; and that Government have already considered representations made by Pleaders in this behalf but would be always ready to give due weight to suggestions, if any, which the High Court may have to make

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U.R. to R.D.No. 10588, dated the 19th September 1949

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Bombay Tenancy Act, 193[illegible]

The Collector, in exercising the powers vested in him under the Mamlatdars' Courts Act, will be acting in a judicial capacity. It would be inexpedient and also impolitic to issue any confidential instructions to set aside the order of the Mamlatdar and restore possession to the applicant in the present case. It would be open to the applicant to approach the Collector under the Act.

Equities too do not appear to be in favour of the applicant. Admittedly his landlord had no claim to the land. The Marwadi had purchased the property in an auction sale and was put in possession by a lawful process and, even after he was evicted unlawfully, he obtained a decree of the Mamlatdar for restoration of possession. In these circumstances, the former owner of the land had no title to the land. He could neither lease nor mortgage the land to the applicant. Consequently the applicant's possession would not be considered to be lawful. Further more the principle of lis pendens will also apply and the applicant can claim no right or interest in the land. The applicant should, therefore, be left to seek hisown remedy.

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U.R. to R.D.No. 10616, dated the 20th September 1949.

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Taking over for management the estate of the Talukdar under Sec. 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, the estate being under the custody of the Receiver.

Bombay Tenancy and Agricultural Lands Act, 1948,- section 44.

Civil Procedure Code-O.40. Rule 1.

"The receiver appointed by the courts under Order 40, Rule 1, of the Civil Procedure Code is an officer of the court. The Receiver is appointed for the benefit of all concerned. He is a representative of the court and of all parties interested in the litigation wherein he is appointed. The appointment of a receiver is the act of the courts and made in the interest of justice. A receiver is an officer or representative of the court and subject to its orderse. His possession is the possession of a court by its Receiver and the tenants in possession when he is appointed to receive rents and profits of immovable property become virtually tenants pro hac vice of the court through landlord. His possession is the possession of all parties to the proceedings according to their titles. The monies in his hands are in custodia legis for the person can make a title to them "(see Mulla's Civil Procedure Code, 11th edition, p. 1140). It may be unfortunate that Mr. Ginwalla, who has been appointed a Receiver by the court, may be an unscrupulous man and he may have been oppressing the tenants whereby the economic condition of the tenants may have deteriorated. But all these considerations would be subordinate to the essential legal position which he has been occupying as court Receiver. As stated above, his possession of the property is to be construed as possession of the court itself and the tenants would be deemed to be the tenants of the court. Consequently, the only course open to the tenants and the Talukdars, if they are oppressed by Mr. Ginwalla, is to approach the court for relief.

Under section 44 of the Bombay Tenancy and Agricultural Lands, Act, no doubt Government is given power to assume the management of the a landholder's

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power to assume the management of the landholder's estate, but Government can do so only (i) when Government is satisfied that on account of neglect of the landholder or disputes between him and his tenants the cultivation of his estate has seriously suffered or, (ii) that it appears to the Government that it is necessary for the purpose of improving the economic and social conditions of the peasants or ensuring the full and efficient use of the land for agriculture. The heading of Chapter IV in which section 44 occurs is "Management of Estates held by Landholders." That would give us an indication that such of the estates which are held by the landholders can be taken under the managment of Government under certain circumstances. The estate is now held o not by the Talukdars but by Govt. Consequently, the provisions of Chapter IV would not be applicable. Further, condition (i) of section 44 would not be applicable because the Talukdars havenot been guilty of any neglect. Nor are there any disputes between them and the tenants. Under condition (ii) section 44 o the management of the estate can be taken over by Government if it is considered necessary for the purpose of improving the economic and social conditions of the peasants or ensuring the full and efficient use of land for agriculture. Since the estate is in possession of the court receiver, whic possession shall be deemed to be the possession of the court itself, the deterioration in the economic condition, if any, could therefore be attributable to the management done by the court through the receiver. It would not, therefore, be desirable to impute such mismanagement when the court itself has been managing the property through the receiver. In the circumstances, it would not be desirable to invoke the aid of section 44 of the Bombay Tenancy and Agricultural Lands Act.

Sd/-P.M.Lad
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O.C. Remembrancer of Legal Affairs.

U.H. to R.D.No. 10876, dated the 28th September 1949.

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Bombay Tenancy and Agricultural Lands Act, 1948. Sections 63,64 and 89(2).

Sales in pursuance of agreements of sale before the Act.

The question raised for the consideration of R.L.A. is whether sales of agricultural lands effected after 28-12-1948 in pursuance of agreements entered into prior to that date would be hit by sections 63 and 64 of the Bombay Tenancy and Agricultural Lands Act, 1948.

It istrue that under clause (b) of section 89(2) of the Bombay Tenancy and Agricultural Lands Act, nothing in this Act shall, save as exp-ressly provided in this Act, affect or be deemed to affect, any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act; and that under the agreements entered into in respect of the sales of agricultural lands prior to 28-12-1948, on which date the Act came into operation, right to enforce specific performance of such agreements is acquiredo or accrued before the commencement of thir Act. But the words "save as expressly provided in this Act" in clause (b) of section 89(2) are very pertinent. Under section 63(1), save as provided in this Act, no sale, gift, ex hange or lease of any land or interest therein, etc.m shall be valid in favour of a person who is not an agriculturist. Consequently, notwithstanding the provision contained in clause (b) of section 89(2), the specific performance of an agreement of sale in respect of an agricultural a land, though entered into prior to 28-12-1948 cannot be enforced since the sale itself of such land would be void. The effect of section 63(1) would, therefore, be to discharge the contract entered into prior to 28-12-1948.

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O.R./ Remembrancer of Legal Affairs.

U.O. to R.D.No. 11007, dated the 30th ~~September~~ September 1949.

S.A.K.

R.I.No. 15502 dt. 21-9-1949.

Submitted:

2. Manishankar D.Joshi, a retired Superintendent of the H.& L. O.D., is the landlord of S.Nos. 78/1 17 and 41/1 of Sandhir, Taluka Olpad, District Surat.

Mr.Manchharam Ambaram Joshi is a protected tenant of S.No. 78/1 and Mr.Chhana Naran is a protected tenant of S.Nos. 17 and 41/1. Regarding S.No. 78/1 Mr.Joshi made an application dated 22-5-1948 to the Mamlatdar of Olpad (Application No. 81 of 1948) requesting for possession of S.No. 78/1 for cultivating personally also stating that the tenant was in arrears of rent and had done certain acts which are destructive and permanently injurious to the land. The Mamlatdar came to the conclusion that the tenant had done no act destructive or injurious to the land and by his order dated 17-8-1948 directed the tenant who had agreed to pay rent of Rs. 22/8 per year to pay the amount of Rs 7/- which arrears due to agreeing to a higher rate.

The request for possession was refused. On appeal (No. 299 of 1948) by Mr. M.D.Joshi the Prant Officer, Chorasi Prant by his order dated 19-7-1949 confirmed the order of Mamlatdar olpad dated 17-8-1949.

Regarding S.Nos. 17 and 45/1 Mr. M.D.Joshi made an application (No. 89 of 1948) dated 7-6-1948 to the Mamlatdar of Olpad requesting possession on the ground of cultivating the a land personally. The Mamlatdar by his order dated 19-6-1948 rejected the application as notice under section 21 of the Bom. Tenancy Act, 1939 was not given.

After his application No. 89 of 1948 was rejected by the Mamlatdar of Olpad and while his appeal No. 299 of 1948 (arising out Tenancy

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Application No. 81 of 1948) was pending before the Prant Officer, Chorasi Prant Mr. Joshi made an application to Government on 9-6-1948 requesting that possession of S.Nos. 17, 48/1 and 78/1, be given to him from his tenants. In this application Mr. Joshi has scrupulously avoided any reference to the pending appeal and Government considering this to be a revision application under section 28 decided to give possession to him, and directed the Collector by G.R.R.D. dated11-7-1949 to grant possession to him. Possession of all the lands in question was accordingly handed o to him on 29-7-19 Being agrieved by this decision of Government the tenants Mr.M.B.Joshi and Mr. Chhana Maran on 29-7-1949 made applications requesting Government to reconsider their order of 11-7-1949. On receipt of these applications Government in R.D. letter dated 16-8-1949 directed the collector not to execute Government orders of 11-7-1949 and if already executed, to restore possession to the tenants. Immediately after Mr. M.D.Joshi came to know of Government orders dated 16-8-1947 he again approached Government requesting that possession granted to him on 29-7-1947 should not now be disturbed for his prestige and the prestige of Government. It is at this stage that Government Government came to know of the pending appeal but that since possession was granted and Mr. Joshi the landlord had himself cultivated the lands Government preferred not to disturb the possession of the landlord and on 31-8-1949 cancelled the stay order dated 16-8-1948. This has left the Tenants more bewildered and now they have approached Government to reconsider the whole case. The approached R.L.A. is requested to advise in the matter.

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Bombay Tenancy Act 1939.....

Finality of Government's Order.

It appears from the facts disclosed in the two cases that the landlord, Manishankar D. Joshi, would not in law be entitled to restoration of his lands from the two tenants and the decision of the Tenancy Aval Karkun, confirmed in appeal by the Prant Officer, appears to be correct. However, on the application made by Mr. Manishankar, even when his appeals were pending before the Prant Officer against the decision of the Aval Karkun, Government without hearing the tenants ordered restoration of the lands to Mr. Manishankar. When that order was questioned by the tenants, Government issued a stay order but later on that stay stay order was cancelled and the original order was affirmed by Government. Mr. Manishankar was informed that the stay order was cancelled and the original order of restoration was reiterated and in similar terms both the tenants also were informed. There ought to be some finality to acts, whether the decision be right or wrong. Although the order passed by Government in the present case may not be correct, still it has been re-affirmed even when it was questioned by the tenants. In the circumstance, it appears desirable not to disturb the original order of Government Government.

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C.C. Remembrancer of Legal Affairs.

U.R. to H.D.No. 11391, dated the 12th October 1949.

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Bombay Tenancy
Act, 1939
Section 25
Revision Application.

In the Record of Rights Ramchandra Power is shown as the protected tenant of the said land. Since he was not a party to the tenancy proceedings, the order passed by the Tenancy Aval Karkun restoring possession of the land to the landlord would not be binding on him. Consequently, notwithstanding that order of the Tenancy Aval Karkun, it would be open to Ramchandra Power to resist eviction. It is not known whether Ramchandra Power was evicted. If he were evicted, it was open to him to seek redress under the provisions of the Bombay Tenancy and Agricultural Lands Act. The order passed by the Tenancy Aval Karkun is binding on his wife Savitri. It appears that she executed a kabulayat in favour of the landlord; it may be on behalf of her husband, Ramchandra, but all the same she has admitted sub-lease of the land which involve a termination of tenancy. If the procedure were irregular, she could have appealed against that order. She does not appear to have done so. In view of the fact that the sub-lease of the land was admitted which involved termination of the tenancy, it appears, as observed by Deputy Secretary, Revenue Department, that there was no miscarriage of justice. The order of the Tenancy Aval Karkun may, therefore, be allowed to stand.

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O.C. Remembrancer of Legal Affairs.

U.O. to R.D.No. 11336, dated the 12th October 1949

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Bombay Tenancy Act. 1939.

Joint Tenancy.

It is undisputed that Mohan alone cultivated the land as tenant for 4 years from 1940 to 1944. For the two preceding years i.e. for the years 1938 - 1940 the Prant Officer has come to the conclusion that the land was jointly cultivated by Mohan and his two uncles Chhagan and Vashram. If this inference of joint cultivation is correct, there would be no difficulty in inferring joint tenancy, because for the year 1938-39 Chhagan passed the Kabulayat while for the next year Vashram passed the Kabulayat, was- from which facts it could be inferred that the Kabulayat was passed by one of the joint cultivators according to convenience though in fact all three were the joint tenants of the land.

Sd/-P.H.Lad
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O.O. Remembrancer of Legal Affairs.

U.R. to R.D.No. 11736, dated the 20th October 1949

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